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Colorado General Assembly

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MEMORANDUM

TO: Michelle Smith and Chad Vorthmann

FROM: Legislative Council Staff and Office of Legislative Legal Services

DATE: January 19, 2018

SUBJECT: Proposed initiative measure 2017-2018 #112, concerning just compensation for damage due to government law, regulation, or regulatory condition

Section 1-40-105 (1), Colorado Revised Statutes, requires the directors of the Colorado Legislative Council and the Office of Legislative Legal Services to "review and comment" on initiative petitions for proposed laws and amendments to the Colorado constitution. We hereby submit our comments to you regarding the appended proposed initiative.

The purpose of this statutory requirement of the directors of Legislative Council and the Office of Legislative Legal Services is to provide comments intended to aid proponents in determining the language of their proposal and to avail the public of knowledge of the contents of the proposal. Our first objective is to be sure we understand your intent and your objective in proposing the amendment. We hope that the statements and questions contained in this memorandum will provide a basis for discussion and understanding of the proposal.

This initiative was submitted with a series of initiatives including proposed initiatives 2017-2018 #108 to #113. The comments and questions raised in this memorandum will not include comments and questions that were addressed in the memoranda for proposed initiatives 2017-2018 #108 to #111 and #113, except as necessary to fully understand the issues raised by the revised proposed initiative. Comments and questions addressed in those other memoranda may also be relevant, and those questions and comments are hereby incorporated by reference in this memorandum.

Purposes

The major purposes of the proposed amendment to the Colorado constitution appear to be:

1. To define "damaged" as used in section 15 of article II of the Colorado constitution to include a situation where the implementation of a law, regulation, or regulatory condition by the state or any of its political subdivisions limits or prevents private property from being used for a purpose that was allowed at the time the owner acquired title, thereby requiring compensation under that section.
2. To define the measure of compensation in such cases as the difference between the fair market value of the property before and after implementation of the law, regulation, or regulatory condition.

Substantive Comments and Questions

The substantive comments and questions raised in the memoranda for proposed initiatives 2017-2018 #108 through #111 are incorporated by reference. The proposed initiative raises the following additional comments and questions:

1. What is a "regulatory condition," and how does it differ from a law or regulation? How is a regulatory condition implemented?
2. What is the difference between a regulatory condition that *limits* property from being used for *all allowable purposes* (at the time the owner acquired title) and a regulatory condition that *prevents* property from being used for *all allowable purposes*? It seems that any condition that results in any reduction on allowable use constitutes a compensable taking?
3. In comparison with proposed initiative #111, this initiative is not restricted to real property?

Technical Comments

The technical comments set forth in the review and comment memorandum on proposed initiative 2017-2018 #108 are applicable to proposed initiative 2017-2018 #112 and, as such, will not be repeated. No new technical comments or questions were raised by this proposed initiative.